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November 20, 2000

Harry M. Schueller, Chief
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-0200

Dear Mr. Schueller:

We are taking the opportunity to respond to the State Water Resources Control Board ("Board") Notice of Public Meeting regarding actions that could be taken to improve the Board's water right process and procedures. Suggestions regarding the Board's process include the following.

Water Rights Hearing:

- A pre-hearing conference would be beneficial in many instances to narrow the issues for the hearing. A pre-hearing conference may also narrow the number of protestants and scope of evidence to be presented at the hearing by providing an open forum for discussion of the issues.
- Evidentiary rules for Board hearings should be defined in the Board's regulations and enforced during the hearing. Often evidence presented by parties is repetitive and violates basic evidentiary rules, such as the hearsay rule or best evidence rule. It would be beneficial to adopt a clear set of rules for the submission of evidence and consistently enforce the rules to ensure pertinent and reliable evidence is considered. Providing the Board members evidentiary and hearing process workshops or seminars may be helpful in ensuring evidentiary and procedural rules are consistently enforced.

The Board should also adopt and implement a clear set of rules regarding burdens of proof. The burden of proof should be provided for each of the different types of proceedings. Such provisions would also assist the Board in its decision-making process.

- The Board should implement a requirement for the issuance of Board decisions within a limited period of time of the final hearing day. This rule may provide for exceptions for extensive hearings, such as the Bay-Delta proceeding, however it does appear necessary to enforce a deadline for Board decisions.
- The application of the *ex parte* rules should be more consistent. Written *ex parte* rules for the Board and staff could be helpful in providing consistent application of the rules. Examples of issues which can and cannot be discussed as well as when in the process the *ex parte* rules apply would also help to ensure consistent application of the rules.
- Board rules and regulations should clearly indicate that a party cannot participate as a protestant in a hearing unless that party has timely filed a notice of protest. The intent of having notice of a protest to a project is to allow the opportunity to resolve the issues raised by the protestant prior to the hearing. Enforcement and clarification of the rule would assist in efficient Board hearings.
- The rules governing motions for reconsideration should be clarified to indicate the time frame in which the Board must grant or deny the motion. Currently, it may be argued the Board has sixty days, but that is based on the rules on the timing to file a Writ. This and other procedural rules could be rewritten to avoid confusion regarding the application and coordination with other rules, including provisions included in the Administrative Procedures Act.

Compliance/Enforcement Rules:

- It should be clarified that filing an “application”(overfiling) when faced with an ACL is not an admission regarding the adequacy or inadequacy of currently held water rights.
- Board regulations should be amended to provide legal review of enforcement actions before the action is taken by the Board staff. This would help ensure consistent enforcement action by the Board and proper oversight of Board staff.

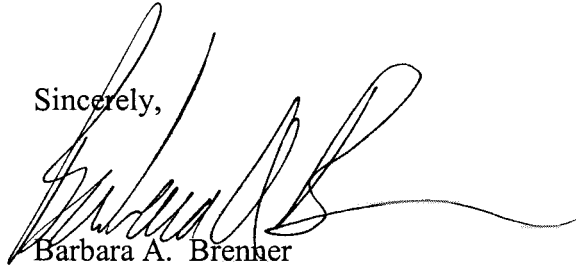
General Suggestions:

- A comprehensive collection of Chief Counsel Opinions should be made available to the public. The Chief Counsel Opinions could be made available on the Board’s web site or by some other readily available electronic means.

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- Board staff should be prohibited from engaging in an advocacy role in Board proceedings. It can appear to be prejudicial to allow Board staff to appear before the board advocating a particular Board decision on any manner. Staff participation in Board proceedings should be clarified in the Board's regulations.
- The Board should not be allowed to engage in cost-sharing with applicants or petitioners for work to be performed by staff to process an application or petition. Cost-sharing arrangements can create the appearance that staff is a project proponent versus an independent Board representative.
- The Board regulations should require notice and a chance to comment on any contracts the Board enters into with outside experts. The regulations should also provide a project proponent the opportunity to review Board notices regarding the project before the notice is provided to the public. Review of the draft notice could be limited to factual corrections to the notice and would help alleviate inaccurate information.

Sincerely,



Barbara A. Brenner

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cc: D. Furman
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M. Van Camp